

IMPLEMENTATION STRATEGY FOR INDIAN COUNTRY
U.S. EPA REGION 5
Fiscal Year 2005

Introduction

The U.S. Environmental Protection Agency (EPA) has the responsibility for managing federal environmental programs for Indian Country, unless and until tribes have assumed regulatory and program management authorities. As set forth in EPA's 1984 Indian Policy, the Agency will assist interested tribal governments in assuming regulatory and program management responsibilities for those programs that have delegable responsibilities. EPA recognizes that because it will take time and resources for tribes to assume regulatory responsibilities, there will be a period of time during which EPA is primarily responsible for managing federal environmental programs for Indian Country. For those regulatory and program management responsibilities that cannot be assumed by tribal governments, the Agency will continue to ensure implementation on every reservation.

In carrying out its responsibilities for Indian Country, EPA's fundamental objective is to protect human health and the environment. EPA recognizes tribal governments as sovereign entities with primary authority and responsibility for reservation populations. EPA's Indian Policy recognizes the Agency's commitment to working with tribes on a government-to-government basis in making decisions to carry out program responsibilities in Indian Country. As with other responsibilities carried out by EPA, the Agency's program implementation efforts are constrained by the availability of resources and the limitations of federal statutory and regulatory authorities. Given resource constraints, EPA's program implementation efforts will focus on areas of greatest significance to the protection of human health and the environment.

The Region has some discretion in how it chooses to undertake program implementation. In some cases, the Region may assign Agency personnel to perform direct implementation activities. In other cases, it may be desirable to explore ways in which tribes can more actively assist the Region in performing these activities. One option is the authority which allows EPA and an interested tribe to enter into a direct implementation tribal cooperative agreement (DITCA) whereby the tribe can assist EPA in carrying out its federal responsibilities. In addition, tribes may assume or be delegated a number of federal regulatory and program authorities. Tribes interested in either DITCAs or program delegation should discuss with the Indian Environmental Office and the appropriate Region 5 Division.

Implementation of the Clean Air Act (CAA)

1. **Designations** When the Agency issues a new or revised national ambient air quality standard (NAAQS), EPA has the responsibility to designate geographic areas as nonattainment (area does not meet the standard) or attainment/unclassifiable (area meets the standard or area cannot be classified on the basis of available information). The Agency has issued a new 2.5 micron particulate matter NAAQS, and a designation must be made for every reservation.

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| Region 5 Division: | Air and Radiation |
| Universe: | 35 tribes/reservations |
| Option(s): | Designation by the Agency in the Federal Register |
| Preferred Option: | Designation by the Agency in consultation with the tribes |

Resource Costs: 1.0 FTE; \$10,000 in travel
 Schedule: All designations will be finalized, in consultation with the tribes, on a parallel track with state designations. The Agency currently anticipates promulgating designations by December 15, 2004.
 Tribal Assumption
 Possible?: No

2. **Federal Implementation Plans (FIPs)** FIPs are a collection of regulations (including emission limits, monitoring requirements, enforcement programs) that will be used to achieve and maintain NAAQS. EPA has developed NAAQS for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Region 5 Indian Country is in attainment for all NAAQS with the possible exception of the revised 8-hour ozone standard and the revised 2.5 micron particulate matter standard. For a reservation that is not in attainment for the new standards, has major sources, and the tribe is not interested in developing a tribal implementation plan (TIP), a FIP may need to be developed.

Region 5 Division: Air and Radiation
 Universe: Reservations designated nonattainment
 Option(s): (1) FIP developed by Agency
 (2) In accordance with a DITCA, tribal staff develops a FIP
 Preferred Option: Agency develops FIP
 Resource Costs: 0.1 FTE; \$2,000 in travel
 Schedule: For those reservations in nonattainment areas, ARD will determine if a FIP is necessary, reasonable, and functional for achieving and maintaining NAAQS within a reservation. Region 5 is participating in a national work group that will facilitate tribal participation in State Implementation Plan (SIP) development. For those tribes in nonattainment areas whose poor air quality is predominately due to transport, participation in SIP development may be the best option for ensuring emission reductions near the reservation.
 Tribal Assumption
 Possible?: Yes

3. **Permitting** Where tribes have not assumed permitting authority, EPA has the responsibility to issue prevention of significant deterioration (PSD) construction permits for new major facilities and major modifications to existing major facilities. After construction is complete, operating permits (also known as Part 71 permits) are required for facilities that are classified as “major” or meet other criteria. Major sources are those that emit, or have the potential to emit on an annual basis at least 250 tons of any air pollutant or 10 tons of a hazardous air pollutant. The permits specify what requirements apply to the facility and what actions the facility must take to comply with those requirements. Currently, the Agency does not have statutory authority to issue construction and operating permits for “minor” sources.

Region 5 Division: Air and Radiation
 Universe: Fond du Lac – Great Lakes Natural Gas
 Lac du Flambeau – JM Products Inc. (proposed sand/gravel operation)

Leech Lake – Great Lakes Natural Gas
 Mille Lacs – Grand Casino Hinckley
 Mille Lacs – Grand Casino Mille Lacs (proposed diesel generators)
 Prairie Island – Treasure Island Casino
 Option(s): (1) Agency develops/issues PSD and Part 71 permits
 (2) In accordance with a DITCA, tribal staff drafts PSD and Part 71 permits for issuance by the Agency
 Preferred Option: Agency develops/issues permits
 Resource Costs: 1.3 FTE; \$8,000 in travel
 Schedule: Fond du Lac – issue final PSD/Part 71 permit
 Lac du Flambeau – drafting PSD permit
 Mille Lacs – Grand Casino Hinckley Part 71 application anticipated by March 2005, drafting PSD permit for Grand Casino Mille Lacs
 Tribal Assumption
 Possible?: Yes

4. **Inspections/Compliance Assistance/Enforcement** Where tribes have not assumed enforcement authority, inspections will be conducted to determine if specific major facilities/sites are meeting CAA requirements. Based on the inspections, appropriate enforcement action will be taken on sources with applicable requirements.

Region 5 Division: Air and Radiation
 Universe: 35 reservations
 Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action
 Preferred Option: Agency conducts inspections/takes appropriate enforcement action
 Resource Costs: 0.2 FTE; \$3,000 in travel
 Schedule: On-going as needed. Based on tips/complaints and observance of the terms and conditions of the facility operating permits.
 Tribal Assumption
 Possible?: Yes

5. **National Emission Standards for Hazardous Air Pollutants, Standard for Demolition and Renovation** Under Section 114 of the CAA, owners and operators of a demolition or renovation activity, as listed in 40 CFR 61.145, must: (1) thoroughly inspect the affected facility for the presence of asbestos prior to the commencement of the demolition or renovation operation; (2) submit to the Agency a Notification of Demolition and Renovation prior to the commencement of the demolition or renovation operation; and (3) comply with all applicable procedures for asbestos emission control. The Agency has the responsibility to verify compliance with the inspection, notification, and removal activities.

Region 5 Division: ARD
 Universe: 35 reservations
 Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action
 Preferred Option: Agency conducts inspections/takes appropriate enforcement action
 Resource Costs: 0.2 FTE; \$3,000 in travel
 Schedule: On-going, as needed
 Tribal Assumption
 Possible?: Yes

6. **Section 112(r) – Risk Management Planning** Under Section 112(r) of the CAA, owners and operators of a stationary source with more than a threshold quantity of a regulated substance, as listed in 40 CFR 68.130, must submit to the Agency risk management plans (RMPs) which outline risks posed to the surrounding community and measures in place to mitigate those risks and/or respond to emergencies at the facility. The Agency has the responsibility to verify that the RMPs contain the necessary components and are adequate.

Region 5 Division: Superfund
 Universe: Facilities in Indian Country that are required to report (presently unknown nationwide)
 Option(s): (1) Agency reviews plans and takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff review plans and forward information to the Agency for appropriate enforcement action
 (3) Reviews are carried out by authorized representative and information is forwarded to the Agency for appropriate enforcement action
 Preferred Option: Agency reviews plans and takes appropriate enforcement action
 Resource Costs: No additional costs, addressed as part of normal workload
 Schedule: In FY'04, for any facilities identified in Indian Country to be noncompliers under Section 112(r), the Agency will outline to the tribe steps it will take to seek compliance by those facilities.
 Tribal Assumption
 Possible?: Yes

Implementation of the Clean Water Act (CWA)

1. **Water Quality Standards** Water quality standards (WQS) are provisions of law that: (1) specifically designate the uses of surface waters; (2) establish the water quality criteria that are necessary to protect designated uses; and (3) establish an antidegradation policy and implementation procedures for maintaining and protecting existing water quality. After EPA approval of tribal standards, or promulgation of federal tribal standards, they are used in conjunction with monitoring data to assess water quality, and they form a basis for WQS program implementation actions (e.g. 401 certifications, development of water quality-based effluent limitations for NPDES permits, TMDLs, etc.).

Region 5 Division: Water

Universe: 33 reservations/tribes (where tribes do not have program eligibility for CWA Section 303 and approved WQS)

Option(s): (1) Promulgation of federal WQS for all tribes through EPA's rulemaking process
(2) Region 5 consults with, and provides assistance to tribes on implementation actions

Preferred Option: EPA HQ may continue to develop an Advanced Notice of Proposed Rulemaking (ANPRM) for federal WQS for waters in Indian Country. The ANPRM is a pre-rulemaking action that is used to determine whether a federal agency should initiate rulemaking. Until tribal or federal WQS are fully in place, Region 5 will ensure water quality within tribal boundaries is protected. Region 5 will consult with the tribes on implementation actions related to any future promulgated federal WQS.

Resource Costs: 0.2 staff FTE to work with EPA HQ on possible promulgation of federal WQS; 0.5 staff FTE for WQS implementation actions

Schedule: On-going

Tribal Assumption

Possible?: Yes, under CWA Section 518

2. **Permitting** Under Section 402 of the CWA, facilities which discharge to surface waters must obtain NPDES permit coverage. Permits specify effluent limitations, facility operational requirements, and monitoring and reporting requirements.

Region 5 Division: Water

Universe: 50 NPDES permittees currently identified

Option(s): (1) Agency develops and issues permit
(2) Agency issues general permits for categories of discharges where pollution risks are relatively lower, and discharge characteristics are very similar from site to site
(3) In accordance with a DITCA, tribal staff draft permit language to assist Region 5 with development of NPDES permits.

Preferred Option: Region 5 will continue to refine the inventory of active NPDES dischargers located in Indian Country. Region 5 will public notice and issue permits for new dischargers and re-issue expired/expiring permits in Indian Country, with priority emphasis on new permits, permits for relatively larger facilities, and other facilities that have relatively more significant potential environmental impacts. Region 5 will allocate staff resources to effectively respond to jurisdictional issues/permit appeals related to NPDES permits in Indian Country. Region 5 will assess based on facility inventories if efficiencies could be gained through issuance of general permits for certain categories of discharges where potential environmental impacts are not to be expected to be severe. Region 5 will work with interested tribes to explore feasibility of DITCAs

Resource Costs: covering work to assist with NPDES permit issuances.
 Schedule: 0.75 staff FTE
 Tribal Assumption: On-going
 Possible?: Yes, under CWA Section 518. Tribal organization implementing the program would need to be fully independent of organizations operating permitted facilities.

3. **Permitting for Storm-water Discharges** The CWA requires NPDES permits for storm water discharges associated with industrial activity. The Phase I Rule regulates discharges from municipal separate storm-sewer systems with populations of at least 100,000 and 11 categories of industrial activity, including construction sites that disturb 5 or more acres. The Phase II Rule covers storm water discharges from smaller municipal separate storm-sewer systems and discharges from construction sites between 1-5 acres. The Agency has promulgated a general permit for storm water discharges from construction sites/activities in Indian Country in Michigan, Minnesota, and Wisconsin.

Region 5 Division: Water
 Universe: 35 tribes/reservations
 Option(s): (1) Agency develops and issues individual permits
 (2) Agency assesses if general permits may be warranted for other categories of industrial activity
 Preferred Option: Region 5 will assess if a general permit may be appropriate for other categories of storm water discharges, and will issue individual (site-specific) permits for storm water discharges from industrial sites or activities where it is not suitable to provide coverage under a general permit.
 Resource Costs: 0.75 staff FTE
 Schedule: On-going
 Tribal Assumption
 Possible?: Yes, under CWA Section 518. Tribal organization implementing the program would need to be fully independent of tribal organizations operating permitted facilities.

4. **Compliance Assistance/Inspections/Enforcement for NPDES Permits** Agency reviews discharge monitoring reports (DMRs) from permittees. Inspections can be carried out to verify that NPDES requirements are met. Based on the compliance tracking and inspection findings, enforcement actions will be initiated, as appropriate.

Region 5 Division: Water
 Universe: 50 NPDES permittees currently identified
 Option(s): (1) Agency conducts inspections of permitted facilities/discharges
 (2) Agency conducts inspections of construction sites to ensure compliance with general permits
 (3) Region 5 supports Circuit Rider program, to provide compliance assistance to tribal utilities subject to NPDES permit requirements

(4) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to the Agency for appropriate follow-up action
 (5) Agency receives DMRs for facilities with EPA permits, enters data into the permit compliance system, and checks reports for significant violations.

Preferred Option: Region 5 will conduct inspections of permitted facilities, including construction sites, and will work with tribes to have tribal staff obtain inspector credentials, where appropriate, and deploy tribal inspectors to assist with inspection activities, as feasible. Region 5 will initiate enforcement actions, as warranted based on noncompliance with permit requirements and inspection findings. Inspections and enforcement actions will be prioritized based on: known water quality impacts; potential significant water quality impacts; recalcitrance of violators; size of dischargers and pollutants in the discharge; failure to monitor and report. Region 5 will continue to support the Circuit Rider program, to provide compliance assistance to tribal utilities subject to NPDES permit requirements.

Resource Costs: 2.0 staff FTE, plus funding for Circuit Rider program

Schedule: On-going

Tribal Assumption

Possible?: Yes, under CWA Section 518. Tribal organization implementing the program would need to be fully independent of organizations operating permitted facilities.

5. **Water Quality Certification** Under Section 401 of the CWA, an applicant for a federal license/permit to conduct an activity which may result in a discharge into navigable waters must obtain certification that such discharge will not violate “applicable” WQS (“applicable” is referred to in the Alaska Rule as those WQS approved by EPA). Two tribes in Region 5 have EPA-approved WQS, but only one of those tribes has formal Section 401 certification procedures adopted into tribal law. EPA will provide assistance to the tribe that does not yet have formal Section 401 certification procedures adopted into tribal law.

Region 5 Division: Water

Universe: Fond du Lac

Option(s): EPA provides Section 401 certification assistance to the tribe, or conducts actual Section 401 certifications on behalf of the tribe

Preferred Option: Agency continues to assist the tribe in finalizing their Section 401 certification procedures and adopting them into tribal law. After procedures are adopted, the tribe can then assume full authority and begin conducting their Section 401 certification program.

Resource Costs: Resource needs covered under WQS implementation and 404 permitting

Schedule: On-going, as projects become known

Tribal Assumption

Possible: Yes, under CWA Section 518. Tribes must have CWA Section 303 program eligibility and approved WQS.

6. **Dredge and Fill Permitting** Under Section 404 of the CWA, a permit is required for the discharge of dredged or fill material into navigable waters, including wetlands. For tribes that have not assumed Section 404 of the CWA, the Army Corps of Engineers is the federal permitting authority. EPA is responsible for reviewing and providing comments on the proposed Section 404 permits.

Region 5 Division: Water
Universe: 35 tribes/reservations
Option(s): Region 5 conducts reviews and provides input to ACOE permit actions, as projects become known
Preferred Option: Region 5 will conduct reviews and provide input to permit actions, as projects become known. Region 5 will communicate with the tribe regarding reviews of proposed Section 404 permits.
Resource Costs: 0.1 staff FTE
Schedule: On-going, as projects are proposed
Tribal Assumption
Possible?: Yes, under CWA Section 518. Tribal organization implementing the program would need to be fully independent of organizations seeking or operating under Section 404 permits.

7. **Inspections/Compliance Assistance/Enforcement for Wetlands** EPA and the U.S. Army Corps of Engineers are responsible for ensuring that Section 404 permits are obtained, where required, and that permit terms and conditions are complied with. Inspections can be carried out to verify that applicable requirements have been met.

Region 5 Division: Water
Universe: 35 tribes/reservations
Option(s): (1) Agency and/or ACOE conducts inspections and initiate enforcement
(2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to the Agency for appropriate follow-up action
Preferred Option: Region 5 will plan inspections in consultation with the ACOE, taking into account potential environmental impacts and tribal or public comments/observations regarding dredging or filling activities. Based on compliance monitoring and inspection findings, enforcement actions will be initiated for significant instances of noncompliance. Region 5 will work with interested tribes to explore the feasibility of using DITCAs to assist with Section 404-related inspection activities.
Resource Costs: 0.1 staff FTE
Schedule: On-going, as needed
Tribal Assumption
Possible?: Yes, under CWA Section 518. Tribal organization implementing the program would need to be fully independent or organizations seeking or operating under Section 404 permits.

8. **Oil Spill Response** Under Section 311 of the CWA, the Agency is required to evaluate the

need for and oversee any response to releases into navigable waters of petroleum products that pose a threat to human health and the environment. The Agency may also pursue compliance assistance or enforcement actions in follow-up to a report of a release where response has been completed.

Region 5 Division: Superfund
Universe: Saginaw Chippewa Tribe – Central Asphalt Spill/Chippewa River
Option(s): Agency staff respond
Preferred Option: Agency response
Resource Costs: Resource needs determined as an event occurs
Schedule: Respond as event occurs
Tribal Assumption
Possible?: No

9. **Inspections/Compliance Assistance/Enforcement – Oil Storage Facilities** Under Section 311 of the Clean Water Act, above ground oil storage facilities must prepare a spill prevention, control and counter-measures (SPCC) plan. The Agency has the responsibility to verify that the plans contain the necessary components and are adequate.

Region 5 Division: Superfund
Universe: Regulated above ground facilities in Indian Country (presently unknown nationwide). Including:
Keweenaw Bay Indian Community – Northern Oil
Leech Lake – J&L Oil Bulk Plant

Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
(2) Inspections carried out by authorized representatives and information is forwarded to the Agency for appropriate enforcement action

Preferred Option: Agency conducts inspections
Resource Costs: No additional costs, addressed as part of normal workload
Schedule: The Agency will include facilities located in Indian Country in any sector-based efforts to identify non-compliers.

Tribal Assumption
Possible?: No

Implementation of the Comprehensive Environmental Response, Compensation and Liability Act

1. **CERCLIS Database** The Agency maintains the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), an inventory of locations where hazardous wastes are suspected to have been released. With every action taken at a particular site CERCLIS is updated to reflect current site status. CERCLIS is available on-line at www.epa.gov/superfund/sites/siteinfo.htm.

Region 5 Division: Superfund
Universe: 35 tribes/reservations
Option(s): Agency maintains database
Preferred Option: Agency maintains database

Resource Costs: No additional costs, addressed as part of normal workload
 Schedule: On-going
 Tribal Assumption
 Possible?: No

2. **Emergency Response/Removals** When notified of a release of hazardous substances to the environment, EPA will coordinate an immediate or short-term response to clean-up and/or contain the hazardous substances.

Region 5 Division: Superfund
 Universe: Keweenaw Bay Indian Community – Quincy Smelter
 Leech Lake – St. Regis Paper Company Site
 Little Traverse Bay Bands – Little Traverse Bay CKD Release Site
 Option(s): Agency response
 Preferred Option: Agency response
 Resource Costs: Resource needs determined as an event occurs
 Schedule: Respond as event occurs
 Tribal Assumption
 Possible?: No

3. **Site Remediation** The most serious hazardous waste sites are placed on the National Priority List (NPL) and cleaned up using a “worst sites first” priority system. The Agency will coordinate the process to clean-up the NPL sites identified within or adjacent to Region 5 Indian Country. After clean-up measures are in place or clean-up is completed, the sites are monitored either on an on-going basis (if long-term clean-up measures are in place) or at statutorily required five-year intervals. This monitoring is done to assure that the remedy in place continues to be protective of human health and the environment. Sites marked below with an (*) are in the monitoring phase.

Region 5 Division: Superfund
 Universe: Bad River, Red Cliff – Ashland/NSP Lakefront Site
 Bay Mills – Cannelton*
 Fond du Lac – St. Louis River/U.S. Steel
 Grand Traverse – Tar Lake, Fox River
 Keweenaw Bay Indian Community – Torch Lake
 Leech Lake – St. Regis Paper Company
 Little River Band – Packaging Corporation of America*
 Match-E-Be-Nash-She-Wish – Allied Paper/Kalamazoo River
 Menominee – Fox River
 Oneida – Fox River
 Saginaw Chippewa – Velsicol
 Sault Ste. Marie – Cannelton*
 St. Croix – Pentawood*

Option(s): Agency assigns remedial program manager to coordinate clean-up
 Preferred Option: Agency response

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| Resource Costs: | Resource needs determined by nature of the site |
| Schedule: | On-going |
| Tribal Assumption | |
| Possible?: | No |

4. **Inspections/Compliance Assistance/Enforcement – Emergency Planning and Community Right-to-Know Act (EPCRA)** Under SARA Title III amendments to CERCLA, any facility that produces, uses, or stores particular chemicals in a quantity greater than the threshold planning quantities must meet certain emergency reporting requirements. Reports are to be submitted to the tribal emergency response commission (TERC) or the formal EPCRA organization (including local emergency response commission) selected by the tribe, and the local fire department. If these reports have not been submitted, EPA can take enforcement actions. SARA Title III also sets forth requirements for creation of such response commissions and places obligations on the TERC for emergency planning and exercising those plans. An administrative law judge decision in EPA Region 3 indicates that the latter steps need to be in place in order for enforcement actions to be supported against a challenge in court.

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| Region 5 Division: | Superfund |
| Universe: | Facilities in Indian Country that are required to report (universe of regulated facilities in Region 5 unknown) |
| Option(s): | (1) Agency conducts inspections/takes appropriate enforcement action against facilities on reservations where tribes have established TERCs or other formal EPCRA organizations and prepared plans (2) Inspections carried out by authorized representative and information forwarded to the Agency for appropriate enforcement action. Agency takes enforcement actions against facilities on reservations where tribes have established TERCs or other formal EPCRA organizations and prepared plans. |
| Preferred Option: | Agency conducts inspections |
| Resource Costs: | No additional costs, addressed as part of normal workload |
| Schedule: | At the request of a tribe or in conjunction with sector-targeted enforcement initiatives, the Agency can conduct inspections of facilities for purposes of compliance assistance or, when an EPCRA organization and emergency plan is in place for the reservation, enforcement can be undertaken by the Agency |
| Tribal Assumption | |
| Possible?: | No |

5. **Inspections/Compliance Assistance/Enforcement Actions for EPCRA Section 313** An owner or operator of a regulated facility must report to EPA and the state, environmental releases, off-site transfers, and particular information required by the Pollution Prevention Act for specific toxic chemicals listed by statute/regulation that were manufactured, processed, or otherwise used in quantities exceeding an established threshold quantity during a calendar year. This information is stored in a database known as the Toxic Release Inventory. Such reports are to be filed by July 1st for the preceding calendar year. The Agency conducts inspections and issues enforcement actions to achieve compliance.

Region 5 Division: Waste, Pesticides and Toxics
 Universe: 35 tribes/reservations
 Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) Inspections carried out by authorized representative and information
 is forwarded to the Agency for appropriate enforcement action
 Preferred Option: Agency conducts inspections and takes appropriate enforcement action.
 Resource Costs: No additional staff costs projected above normal workload
 Schedule: As part of annual Region 5 neutral inspection targeting, the Agency will
 identify facilities as potential sites for inspection.
 Tribal Assumption
 Possible?: No

Implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

1. **Operate Certification Program** Under FIFRA, applicators must be certified as competent to apply restricted use pesticides in accordance with national standards. Applicator training includes safe pesticide use, label comprehension, pesticide application equipment and techniques, environmental hazards, pesticide product information, and laws/regulations. For tribes that have not assumed federal programs and have not entered into agreements with a state, the Agency has the responsibility to assure that applicators of restricted use pesticides operating in Indian Country have the necessary training on pesticide use and integrated pest management, and are certified to apply restricted use pesticides.

Region 5 Division: Waste, Pesticides and Toxics
 Universe: 35 tribes/reservations
 Option(s): (1) Agency operates certification program
 (2) Agency enters into reciprocity agreements with states who are
 operating Certification Programs, to certify applicators who are applying
 restricted use pesticides in Indian Country
 Preferred Option: Agency enters into reciprocity agreements with states who are operating
 Certification Programs, to certify applicators who are applying restricted
 use pesticides in Indian Country
 Resource Costs: 0.1 staff FTE; \$80,000 in grants for cooperative agreements
 Schedule:
 Tribal Assumption
 Possible?: Yes

2. **Enforce Establishment Compliance** Under FIFRA, pesticide products must be registered with EPA before they can be sold and distributed. Any establishment that produces a pesticide or pesticide active ingredient must be registered with EPA. FIFRA also imposes reporting and recordkeeping requirements on certain establishments. EPA conducts inspections at producing and retail establishments, and any other establishment that distributes pesticides, to ensure proper registration, labeling, formulation, reporting, and recordkeeping.

Region 5 Division: Waste, Pesticides and Toxics
 Universe: 33 tribes/reservations

Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to the Agency for appropriate enforcement action

Preferred Option: EPA conducts inspections and takes enforcement action. Agency will work with tribes interested in applying for DITCAs.

Resource Costs: 0.3 staff FTE; \$80,000 in grants for cooperative agreements

Schedule: On-going, based on tips and complaints initially. The Agency will develop a neutral inspection scheme based on information collected concerning establishments in Indian Country.

Tribal Assumption Possible?: Yes

3. **Enforce Pesticide Use Compliance** Under FIFRA, all registered pesticides have labels which include precautions, warnings and use directions. An applicator who does not fully comply with the label requirements is in violation of FIFRA. Product labels for pesticides registered for use on farms, forests, nurseries and greenhouses, will cite the requirement to follow the Worker Protection Standards (WPS). Agricultural establishments and commercial establishments who use such pesticide products must adhere to some or all of the use requirements under the WPS. The Agency is responsible for verifying that pesticides are being used in accordance with their labels, and if not, take appropriate enforcement action.

Region 5 Division: Waste, Pesticides and Toxics

Universe: 35 tribes/reservations

Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action

Preferred Option: EPA will conduct inspections. Agency will work with tribes interested in applying for DITCAs.

Resource Costs: 0.4 FTE; \$5,000 travel; \$80,000 in grants for cooperative agreements

Schedule: On-going, based on tips and complaints initially. The Agency will develop a neutral inspection scheme based on information collected concerning agricultural activities in Indian Country.

Tribal Assumption Possible?: Yes

4. **Enforce Endangered Species Protection Program** Under FIFRA, pesticide labels instruct users to comply with the limitations set forth in each county endangered species bulletin. EPA has the responsibility to assure that pesticide users comply with the stated label limitations.

Region 5 Division: Waste, Pesticides and Toxics

Universe: 33 tribes/reservations
 Option(s): Currently a voluntary program
 Resource Costs: Resource needs covered under pesticide use compliance above
 Schedule: The Agency will address this particular use restriction under item number 3 “Enforce Pesticide Use Compliance”, at such time as the program is deemed enforceable by EPA Headquarters
 Tribal Assumption
 Possible?: To be determined

5. **Enforce Proposed Pesticide and Groundwater State Management Plan Rule** Under the proposed Rule, states and tribes are required to develop a pesticide management plan (PMP) to protect groundwater from the pesticide active ingredients atrazine, simazine, alachlor and metolachlor. If PMPs are not developed and approved by EPA, the use of these pesticide active ingredients will be prohibited on the reservation. If a tribe elects not to develop a PMP, the Agency will enforce the use prohibition.

Region 5 Division: Waste, Pesticides and Toxics
 Universe: 33 tribes/reservations
 Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action
 Preferred Option: EPA will conduct inspections. Agency will work with tribes interested in applying for DITCAs.
 Resource Costs: Resource needs covered under pesticide use compliance above
 Schedule: The Agency will address this particular use restriction under item number 3 “Enforce Pesticide Use Compliance”, at such time as the Rule is published as final in the Federal Register
 Tribal Assumption
 Possible?: To be determined

Implementation of the Resource Conservation and Recovery Act (RCRA)

Subtitle C – Hazardous Waste

1. **Reporting/Notification** Under Sections 3002-3003 of RCRA, facilities that handle (generate, store, transport, etc.) hazardous wastes must notify EPA and receive a RCRA identification number. A waste is considered hazardous if it possesses at least one of four characteristics (ignitability, corrosivity, reactivity, or toxicity), or EPA has determined it is a “listed hazardous waste.” EPA will maintain a database of hazardous waste handlers in Region 5 Indian Country.

Region 5 Division: Waste, Pesticides and Toxics
 Universe: 35 tribes/reservations (150 generators known)
 Option(s): Agency maintains database
 Preferred Option: Agency maintains database

Resource Costs: No additional resources needed, addressed as part of normal workload
 Schedule: On-going, as facilities are identified
 Tribal Assumption
 Possible?: No

2. **Permitting** Under Section 3005 of RCRA, facilities that treat, store, and/or dispose of hazardous waste must receive a federal operating permit. The permits specify applicable requirements and what actions the facility must take to comply with those requirements.

Region 5 Division: Waste, Pesticide and Toxics
 Universe: No known facilities in Region 5 Indian Country
 Option(s): Agency issues permits
 Preferred Option: Agency issues permits
 Resource Costs: 0.0 staff FTE
 Schedule: Agency response as facilities are identified
 Tribal Assumption
 Possible?: No

3. **Inspections/Compliance Assistance/Enforcement** Under Section 3007 of RCRA, inspections will be performed to verify that facilities are meeting RCRA requirements. Compliance assistance will be offered to help facilities maintain compliance. If required, appropriate enforcement action will be taken to ensure facilities are in compliance.

Region 5 Division: Waste, Pesticide and Toxics
 Universe: 35 tribes/reservations (150 facilities known)
 Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
 (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
 (3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action
 Preferred Option: EPA will conduct inspections. The Agency will work with tribes interested in applying for DITCAs.
 Resource Costs: 0.25 staff FTE; \$3,000 travel
 Schedule: 8 facilities are targeted annually for compliance assistance/inspections
 Tribal Assumption
 Possible?: No

Subtitle D – Solid Waste

1. **Inspections/Compliance Assistance/Enforcement** Inspections will be performed to verify that construction/demolition landfills are in compliance with 40 CFR Part 257 and municipal solid waste landfills are in compliance with 40 CFR Part 258. Compliance assistance will be offered to help facilities maintain compliance. If required, appropriate enforcement action will be taken to ensure facilities are in compliance.

Region 5 Division: Waste, Pesticide and Toxics

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| Universe: | Municipal solid waste landfills – currently none Construction/demolition landfills – 6 tribally-operated [Bois Forte, Grand Portage, Keweenaw Bay, Lac du Flambeau (2), White Earth] Post-Closure Monitoring: Red Lake Illegal dumps with C/D waste: Lower Sioux |
| Option(s): | (1) Agency conducts inspections/takes appropriate enforcement action (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action (3) Inspections are contracted and information is forwarded to the EPA for appropriate enforcement action |
| Preferred Option: | EPA will conduct inspections. The Agency will work with tribes interested in applying for DITCAs. |
| Resource Costs: | 1.0 staff FTE; \$4,000 travel; \$50,000 grant for Senior Environmental Employment Program |
| Schedule: | In FY'05, on-site compliance assistance will be provided. In FY'05-06, Region 5 will work with Headquarters to develop C/D debris management/landfill operations guidance. |
| Tribal Assumption Possible?: | No |

Subtitle I – Underground Storage Tanks (USTs)

1. **Reporting/Notification** Under Section 9002 of RCRA, there are reporting requirements for the following occasions: at the time of UST installation, when a suspected release occurs, when corrective actions are taken, and when the UST is permanently closed. Section 9002 of RCRA explicitly states all tank notifications must be sent to the implementing state agency, however, Region 5 will maintain a UST database for Indian Country.

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| Region 5 Division: | Waste, Pesticide and Toxics |
| Universe: | 35 tribes/reservations 370 operating tanks, 21 temporarily closed, 969 permanently closed |
| Option(s): | Agency maintains database |
| Preferred Option: | Agency maintains database |
| Resource Costs: | Resource needs included in inspection/compliance assistance work below |
| Schedule: | Information updated and received as needed through tribal contacts, review of state databases, and federal inspections |
| Tribal Assumption Possible?: | No |

2. **Inspections/Compliance Assistance/Enforcement** Under Section 9005 of RCRA, facilities will be inspected to verify that USTs are in compliance with the federal requirements for operation and maintenance. EPA will offer compliance assistance to help facilities maintain compliance, and take appropriate enforcement actions to ensure facilities are in compliance.

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| Region 5 Division: | Waste, Pesticide and Toxics |
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Universe: 370 operating tanks, 21 temporarily closed
Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
(2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
(3) Inspections carried out by authorized representative and information is forwarded to the Agency for appropriate enforcement action
Preferred Option: EPA will conduct inspections. The Agency will work with tribes interested in applying for DITCAs.
Resource Costs: 1.1 staff FTE; \$50,000 in contracts (Senior Environmental Employment Program); \$1,400 in travel
Schedule: On-going, 40-60 USTs are targeted annually for inspections
Tribal Assumption
Possible?: No

3. **Corrective Action Oversight** The Agency will provide oversight during the remediation of leaking underground storage tanks (LUSTs).

Universe: 75 LUSTs
Option(s): (1) Agency provides oversight
(2) In accordance with a DITCA, tribal staff provide oversight
Preferred Option: Agency will provide oversight. EPA will work with tribes interested in applying for DITCAs.
Resource Costs: Resource needs included in inspections/compliance assistance work above
Schedule: On-going
Tribal Assumption
Possible?: No

Implementation of the Safe Drinking Water Act (SDWA)

1. **Monitor Public Water Supplies** Under the SDWA, public water supplies are required to monitor drinking water in accordance with national standards, and meet maximum contaminant level (MCL) and treatment requirements. Monitoring reports are submitted to the Agency for compliance review, tracking, and input into the national database. The Region 5 goal is at least 90% of the tribal community water systems will be in full compliance with monitoring and reporting requirements.

Region 5 Division: Water
Universe: 118 tribal public water systems
Number of non-tribally owned public water systems not yet identified
Option(s): (1) Agency tracks and reports compliance
(2) Region 5 supports Circuit Rider program, to provide compliance assistance to tribal utilities subject to PWSS monitoring requirements
Preferred Option: Agency tracks and reports compliance. Circuit Riders provide technical assistance to regulated entities related to monitoring requirements and monitoring activities.

Resource Costs: 8.2 staff FTE; \$400,000 annually for Circuit Rider program; 1.5 FTE in Senior Environmental Employment Program

Schedule: Information received and database updated on an on-going basis

Tribal Assumption

Possible?: Yes. There is a two-phased process: program eligibility pursuant to SDWA Section 1451 and program primacy. Tribal organization implementing the program would need to be fully independent of organization operating the tribal public water supply system(s).

2. **Enforce Public Water Supply Requirements** Instances of noncompliance with monitoring, MCL, or reporting requirements will be followed-up on, and enforcement actions will be initiated, as appropriate. The national EPA goal is at least 95% of the population served by tribal community water systems will be provided drinking water that meets all EPA health-based standards.

Region 5 Division: Water

Universe: 118 tribal public water systems
Number of non-tribally owned public water systems not yet identified

Option(s): (1) Agency conducts follow-up with compliance assistance and, as appropriate, enforcement actions
(2) Region 5 supports Circuit Rider program, to provide compliance assistance to tribal public water systems

Preferred Option: Agency conducts follow-up with compliance assistance and, as appropriate, enforcement actions. Decision-making regarding compliance and/or enforcement actions will be based on compliance tracking data, input from Circuit Riders, input from tribal environmental staff, and potential public health impacts. Region 5 will continue to support the Circuit Rider program, to provide compliance assistance to tribal public water systems.

Resource Costs: Resource needs covered under monitoring public water systems above

Schedule: On-going, as needed

Tribal Assumption

Possible?: Yes. There is a two-phased process: program eligibility pursuant to SDWA Section 1451 and program primacy. Tribal organization implementing the program would need to be fully independent of organization operating the tribal public water supply system(s).

3. **Regulation of Underground Injection Wells** Under SDWA, EPA has established national requirements for proper operation and in some cases closure of underground injection control (UIC) wells. UIC wells are either authorized by rule or in some instances, such as for most deep wells, authorized by permit. To date all shallow Class V wells in Region 5 have been authorized by rule (assuming the owner/operators have submitted inventory information to EPA). The Agency is responsible for permit actions for UIC wells in Indian Country for which permits are required.

Region 5 Division: Water

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| Universe: | Class I wells – none identified in Indian Country Class II wells – 16 (Saginaw Chippewa reservation) Class III wells – none identified in Indian Country Deep Class V (spent-brine return flow) wells – none identified in Indian Country Shallow Class V wells – 462 (Number of wells identified to date, including closed/inactive wells. The inventory for shallow Class V wells is growing as inventory development efforts accelerate.) |
| Option(s): | Agency assesses environmental impacts and compliance with standards, and takes UIC permit action (issuance or denial) |
| Preferred Option: | Agency assesses environmental impacts and compliance with standards, and takes UIC permit action (issuance or denial) |
| Resource Costs: | 1.5 staff FTE; 1 FTE interns (tribal college); 1 FTE Senior Environmental Employment Program |
| Schedule: | On-going |
| Tribal Assumption Possible?: | Yes. There is a two-phased process: program eligibility pursuant to SDWA Section 1451 and program primacy. Tribal organization implementing the program would need to be fully independent of organizations operating UIC wells. |

4. **Inspection/Compliance Assistance/Enforcement of UIC Requirements** Under the SDWA, the Agency has established national requirements for proper operation and closure of UIC wells. The Agency has the responsibility to assure that all regulated UIC wells are in compliance.

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| Region 5 Division: | Water |
| Universe: | Class I wells – none identified in Indian Country Class II wells – 16 (Saginaw Chippewa reservation) Class III wells – none identified in Indian Country Deep Class V (spent-brine return flow) wells – none identified in Indian Country Shallow Class V wells – 462 identified to date (including closed/inactive) |
| Option(s): | (1) Region 5 conducts inspections/takes appropriate enforcement action (2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action |
| Preferred Option: | EPA will conduct inspections and initiate enforcement action, as appropriate. Region 5 will work with interested tribes to explore the feasibility of DITCAs for facility inspections. |
| Resource Costs: | Resource needs covered under permitting/regulation of UIC wells above |
| Schedule: | EPA will continue to build the Class V inventory for Region 5 Indian Country, and will undertake investigations/follow-up for wells suspected of adversely impacting groundwater |
| Tribal Assumption | |

Possible?: Yes. There is a two-phased process: program eligibility pursuant to SDWA Section 1451 and program primacy. Tribal organization implementing the program would need to be fully independent of organizations operating UIC wells.

Implementation of the Toxic Substances Control Act (TSCA)

Lead-Based Paint Requirements

1. **Inspections/Compliance Assistance/Enforcement Actions – Section 1018** Section 1018 of TSCA requires disclosure of information concerning lead-based paint and lead-based paint hazards before the sale or lease of target housing built before 1978. The Agency has the responsibility to ensure that proper disclosure is occurring on each reservation.

Region 5 Division: Waste, Pesticide and Toxics
Universe: 35 tribes/reservations
Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
(2) Inspections carried out by authorized representative and information forwarded to the Agency for appropriate enforcement action
Preferred Option: Agency conducts inspections/takes appropriate enforcement action
Resource Costs: 0.3 staff FTE; \$3,000 travel
Schedule: On-going, inspections based on tips and complaints
Tribal Assumption
Possible?: No

2. **Operate Training/Accreditation/Certification Program – Section 402** Section 402 of TSCA requires accreditation of lead-based paint training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. The Agency has the responsibility to ensure that individuals and firms performing lead-based paint activities (inspections, risk assessments and abatement) in Indian Country have the necessary training and certification.

Region 5 Division: Waste, Pesticides and Toxics
Universe: 33 tribes/reservations
Option(s): (1) Agency operates a training/accreditation/certification program and conducts inspections/takes appropriate enforcement action.
(2) Agency operates a training/accreditation/certification program. In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections/compliance assistance and forward information to EPA for appropriate enforcement action.
(3) Agency operates a training/accreditation/certification program. Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action.
Preferred Option: Agency operates a training/accreditation/certification program and conducts inspections, as needed. Agency will work with tribes interested in applying for DITCAs to conduct inspections.
Resource Costs: 0.1 staff FTE; \$2,000 travel
Schedule: On-going. Agency will accredit and certify training providers, firms and

individuals performing lead-based paint activities in Indian Country on demand. Conducts inspections based on tips and complaints.

Tribal Assumption

Possible?: Yes

3. **Inspections/Compliance Assistance/Enforcement Action – Section 406(b)** Section 406(b) of TSCA requires that compensated renovators distribute information on lead-based paint and lead-based paint hazards to owners and occupants of most pre-1978 residential housing before beginning renovations. The Agency has the responsibility to ensure that the required information is distributed prior to renovation in Indian Country.

Region 5 Division: Waste, Pesticide and Toxics

Universe: 35 tribes/reservations

Option(s): (1) Agency conducts inspections/takes appropriate enforcement action
(2) In accordance with a DITCA, tribal staff who have obtained inspector credentials conduct inspections and/or compliance assistance and forward information to EPA for appropriate enforcement action
(3) Inspections carried out by authorized representative and information is forwarded to EPA for appropriate enforcement action

Preferred Option: EPA will conduct outreach/education activities and provide compliance assistance to the regulated community until this rule becomes enforceable. When the rule becomes enforceable, the Agency will conduct inspections based on tips/complaints. EPA will work with tribes interested in applying for DITCAs.

Resource Costs: \$1,000 travel, no additional staff cost is projected above normal workload

Schedule: On-going, respond to tips and complaints

Tribal Assumption

Possible?: Yes

TSCA Section 6 – Asbestos

1. **Inspections/Compliance Assistance/Enforcement Actions – AHERA** The Asbestos Hazard Emergency Response Act requires schools to be inspected for asbestos-containing building materials, to develop management plans, and implement response actions in K-12 schools. The statute also requires other persons to comply with the requirements of AHERA or any rule or order issued under AHERA. The Agency is responsible for overseeing compliance with AHERA and for providing outreach and technical assistance.

Region 5 Division: Waste, Pesticides and Toxics

Universe: 35 tribes/reservations

Option(s): Agency conducts inspections and takes appropriate enforcement action

Preferred Option: EPA will conduct inspections and take appropriate enforcement action

Resource Costs: No additional costs projected above normal workload

Schedule: On-going, based on tips/complaints

Tribal Assumption

Possible?: No

2. **Inspections/Compliance Assistance/Enforcement Actions – MAP** The Model Accreditation Plan requires mandatory training and accreditation for all persons who inspect for and who design and conduct response actions regarding asbestos-containing building materials in school, public, and commercial buildings. The training includes how to properly identify asbestos, as well as, the proper techniques and procedures to prevent releases of asbestos. Training and accreditation can be obtained through the following sources: EPA-approved tribal accreditation program, EPA-approved state accreditation program, EPA-approved accreditation program administered by private companies.

Region 5 Division: Waste, Pesticides and Toxics
Universe: 35 tribes/reservations
Option(s): EPA conducts inspections and takes appropriate enforcement action
Preferred Option: EPA will conduct inspections
Resource Costs: No additional costs projected above normal workload
Schedule: On-going, inspections based on tips/complaints
Tribal Assumption
Possible?: No

TSCA Section 6 – Polychlorinated Biphenyls (PCBs)

1. **Inspections/Compliance Assistance/ Enforcement Actions** TSCA regulations include a ban on the manufacture, processing, and distribution in commerce of PCBs, as well as, requirements for proper use, storage, disposal, recordkeeping, and marking. The Agency conducts inspections to ensure compliance with these regulations.

Region 5 Division: Waste, Pesticides and Toxics
Universe: 35 tribes/reservations
Option(s): Agency conducts inspections and takes appropriate enforcement action
Preferred Option: Agency conducts inspections and takes appropriate enforcement action
Resource Costs: No additional costs projected above normal workload
Schedule: As part of annual Region 5 neutral inspection targeting, the Agency will identify facilities as potential sites for inspection
Tribal Assumption
Possible?: No

2. **Remediation of Spilled PCBs** PCB regulations require the proper disposal of PCBs and/or PCB contaminated material by a permitted facility (e.g. incinerator or landfill). There are also regulations governing the remediation of PCBs that were improperly disposed or spilled.

Region 5 Division: Waste, Pesticides and Toxics
Universe: 35 tribes/reservations
Option(s): On a case by case basis, the Agency (operating under TSCA, Superfund, RCRA or GLNPO) ensures that applicable statutes/regulations governing the proper remediation of PCB contamination are followed
Preferred Option: Agency response
Resource Costs: No additional staff costs projected above normal workload
Schedule: Respond as event occurs

Tribal Assumption
Possible?: No

Enforce TSCA Sections 4, 5, 8, 12, and 13 -- Core TSCA

1. **Inspections/Compliance Assistance/Enforcement Actions** TSCA provides the Agency with authorities to control, including prohibiting any aspect of commerce, those chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards. Such aspects of commerce include the manufacture, processing, labeling, processing, distribution, importation, storage, testing, use, exportation, disposal, and/or recordkeeping of chemical substances and mixtures. The Agency ensures compliance with the statutory and regulatory requirements of core TSCA through inspections and enforcement actions.

Region 5 Division: Waste, Pesticides and Toxics
Universe: 35 tribes/reservations
Option(s): Agency conducts inspections and takes appropriate enforcement action
Preferred Option: EPA conducts inspections and takes appropriate enforcement action
Resource Costs: No additional staff costs projected above normal workload
Schedule: As part of annual Region 5 neutral inspection targeting, the Agency will identify facilities as potential sites for inspection

Tribal Assumption
Possible?: No